STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS

DRAFT

Date Amended:	**Enrolled**	Bill No:	**SB 1685**
Tax:	**Transactions and Use**	Author:	**Kehoe**
Related Bills:	**AB 1646 (DeSaulnier)**		

BILL SUMMARY

This bill would authorize the San Diego Regional Transportation Commission, subject to two-thirds approval of the voters of the County of San Diego, to increase their transactions and use tax rate and expand the purposes for which revenues can be used.

ANALYSIS

CURRENT LAW

The State Board of Equalization (Board) administers local sales and use taxes under the Bradley-Burns Uniform Local Sales and Use Tax Law and under the Transactions and Use Tax Law, which are divisions of the Revenue and Taxation Code. In addition, various provisions under the Public Utilities Code authorize counties to establish transportation authorities and to impose transactions and use taxes for transportation purposes. The provisions under the Public Utilities Code provide that any transactions and use tax ordinance shall conform to provisions under the Transactions and Use Tax Law. The following explains the local sales and use taxes administered by the Board.

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (commencing with Section 7200 of the Revenue and Taxation Code), authorizes cities and counties to impose a local sales and use tax. The rate of tax is fixed at 1.25 percent of the sales price of tangible personal property sold at retail in the local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. However, beginning July 1, 2004, and continuing through the "revenue exchange period" (also known as the "Triple Flip"), Section 7203.1 temporarily suspends the authority of a county or a city to impose a tax under Sections 7202 and 7203, and instead provides that the applicable rate is the following: 1) in the case of a county, 1 percent; and 2) in the case of a city, 0.75 percent or less. "Revenue exchange period" means the period on or after July 1, 2004, and continuing until the Department of Finance notifies the Board, pursuant to Section 99006 of the Government Code, that the $15 billion Economic Recovery Bonds have been repaid or that there is sufficient revenue to satisfy the state's bond obligations.

Of the 1 percent, cities and counties use the 0.75 percent to support general operations. The remaining 0.25 percent is designated by statute for county transportation purposes and may by used only for road maintenance or the operation of transit systems. The counties receive the 0.25 percent tax for transportation purposes regardless of whether the sale occurs in a city or in the unincorporated area of a county.

The **Transactions and Use Tax Law** (commencing with Section 7251 of the Revenue and Taxation Code) authorizes cities and counties to impose transactions and use taxes (hereinafter referred to as district taxes) under specified conditions. **Section 7285** authorizes a county to impose a district tax for general purposes at a rate of 0.25

percent, or multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a majority vote of the qualified voters of the county. **Section 7285.5** authorizes a county to impose a district tax for special purposes at a rate of 0.25 percent, or multiple thereof, if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a two-thirds vote of the qualified voters of the county.

Counties can also establish a transportation authority to impose district taxes under the Public Utilities Code. Senate Bill 142 (Chapter 786, Statutes of 1987, Deddeh) added Division 19 (commencing with Section 180000) of the Public Utilities Code. This division is known as the **Local Transportation Authority and Improvement Act (LTAIA)**. The LTAIA authorizes a county board of supervisors to create an authority within the county or designate a transportation planning agency pursuant to Section 29532 of the Government Code, and to impose a district tax, subject to the applicable voter approval requirement. The revenues from these taxes may be allocated by the authority for the construction, maintenance, improvement, and operation of local streets, roads, and highways, and the construction, improvement, and operation of public transit systems.

Senate Bill 361 (Chapter 1576, Statutes of 1985) added Chapter 2 of Division 12.7 (commencing with Section 132300) to the Public Utilities Code. This chapter is known as the **San Diego County Regional Transportation Commission Act**. Among other things, the San Diego County Regional Transportation Commission (SDRTC) is authorized to impose a district tax up to 1 percent, subject to voter approval, for various transportation purposes. Senate Bill 521 (Chapter 297, Statutes of 2001) authorized the SDRTC to extend or expand, or both, the existing district tax upon approval of the voters. The expanded purposes for the revenues include acquisition, management, maintenance, and monitoring of natural habitat and open space, development and implementation of watershed management, and construction, repair replacement, and maintenance of stormwater conveyance systems.

The combined rate of all district taxes imposed within a county cannot exceed 2 percent.

Local entities are required to contract with the Board to perform all functions in the administration of the ordinances imposing the district taxes.

<div align="center">PROPOSED LAW</div>

This bill would amend Sections 132304, 132320, 132322, 132324, 132328, 132330, 132332, and 132334 of, and add Sections 132321 and 132360.6 to, the Public Utilities Code, to authorize the SDRTC to increase the tax rate up to the maximum tax rate authorized under Section 132307, subject to voter approval. This bill would also revise and expand the purposes for which the revenues from the tax could be used to include covering the costs of implementation of the regional comprehensive plan, water quality improvement, beach sand nourishment projects, and other various projects and purposes.

This bill provides a definition for "increase" to mean increasing the tax rate or the maximum tax rate authorized in the tax ordinance originally imposing the tax to an amount that does not exceed the maximum tax rate authorized under Section 132307, which provides that the maximum tax rate is 1 percent.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

This bill defines "purposes" for which revenue derived from the district tax may be expended, in addition to the other purposes listed in Articles 5, 6, and 6.5, to include funding one or more grants to provide funding mechanisms for purchases of property or long-term management and monitoring of projects authorized by this section.

This bill would provide that any increase in the tax rate or the maximum tax rate authorized by the ordinance shall be operative in accordance with Section 132304, which provides that an ordinance shall be operative on the first day of the first calendar quarter commencing more than 110 days after adoption of the ordinance.

This bill would provide legislative findings and declarations to specify that any expansion, extension, or increase of the district tax because of the amendments to Section 132320 will apply prospectively to district taxes approved by the voters on or after January 1, 2009.

IN GENERAL

As of April 1, 2008, there are 91 local jurisdictions (city, county, and special purpose entity) imposing a district tax for general or specific purposes. Of the 91 jurisdictions, 36 are county-imposed taxes and 55 are city-imposed taxes. Of the 36 county-imposed taxes, 24 are imposed for transportation purposes (and 23 of these taxes are imposed under the authority of the Public Utilities Code).

As stated previously, the combined rate of all district taxes imposed in any county shall not exceed 2 percent. Generally, tax rates are imposed at a rate of 0.25 percent or 0.25 percent increments up to the 2 percent limit. Currently, the district tax rates vary from 0.10 percent to 1 percent. The combined state, local, and district tax rates range from 7.375 percent to 8.75 percent.

Some cities and counties have more than one district tax in effect, while others have none.   A listing of the district taxes, rates, and effective dates is available on the Board's website: www.boe.ca.gov/sutax/pdf/districtratelist.pdf. Because the combined rate of all district taxes imposed within a county cannot exceed 2 percent, the current maximum combined state, local, and district tax rate is 9.25 percent.

BACKGROUND

In November 1987, voters in the County of San Diego approved the San Diego Regional Transportation Commission tax known as the TransNet. The tax became operative on April 1, 1988 and is imposed at a rate of 0.50 percent. This tax was due to expire March 31, 2008. In November 2004, voters of San Diego County voted to extend this tax an additional 40 years until March 31, 2048.   The purposes for which the revenues shall be used include, but are not limited to, construction, capital acquisition, maintenance, and operation of streets, roads, and highways, including state highways, and the construction, maintenance, and operative of public transit systems, including exclusive public mass transit guideway systems. The tax revenues may also be used for any or all of the following: acquisition, management, and monitoring of natural habitat and open space, development and implementation of watershed management, and construction, repair, replacement of storm water conveyance systems.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the San Diego Association of Governments (SANDAG). According to the author's office, the purpose of the bill is to increase San Diego County's sales tax rate by 0.50 percent to a maximum rate of 1 percent to pay for critical infrastructure needs identified in the Regional Comprehensive Plan, which includes shoreline preservation, water quality improvements, increased public transit, and habitat acquisition and maintenance of the region's 360,000 acres of habitat preserves.

2. **Amendments** The **April 22, 2008 amendments** added legislative findings and declarations for the purpose of clarifying that any expansion, extension, or increase of district taxes resulting from amendments to Section 132320 pursuant to this measure shall apply prospectively to district taxes approved by the voters on or after January 1, 2009. The **April 7, 2008 amendments** (1) addressed a technical concern raised in the Board staff analysis and reduced the operative date time frame following the adoption of a district tax ordinance from 120 days to 110 days, and therefore provides that a district tax would be operative on the first day of the first calendar quarter commencing more than 110 days (rather than 120 days) after the adoption of the ordinance; and (2) revised the purposes for which the revenues can be used to include funding grants to provide funding mechanisms for purchases of real property or long-term management and monitoring of projects, as specified.

3. **Current tax rate limitations.** Section 132307 of the Public Utilities Code authorizes the SDRTC to impose a district tax, subject to voter approval, in increments of 0.25 percent and not to exceed a maximum tax rate of 1 percent. Section 132307 also provides that the tax must conform to Part 1.6 of the Transactions and Use Tax Law. Section 7251.1 of Part 1.6 provides that the combined rate of all district taxes imposed in any county cannot exceed 2 percent.

   Currently, San Diego County has four district taxes levied within its borders. There is one countywide tax (SDRTC) and three citywide taxes. The one countywide tax is the 0.50 percent district tax levied by the SDTRC for transportation purposes. The three citywide taxes are as follows: City of El Cajon levies a tax at a rate of 0.50 percent for public safety purposes, City of National City levies a tax at a rate of 1 percent for general purposes, and City of Vista levies a tax at a rate of 0.50 percent for general purposes. District taxes imposed by a city count against the 2 percent countywide rate limitation. The following table illustrates how the 2 percent cap applies:

Current Rate in San Diego County	Highest city rate (National City)	Highest city rate counts against county rate	Available rate to San Diego County
0.50%	1%	0.50% (county) + 1% (National City) = 1.50%	0.50% 1.50% (county and highest city rate) + 0.50% (available rate) = 2% cap

   Thus, the provisions under the Public Utilities Code limit the SDTRC from levying a

tax at a rate greater than 1 percent. Because SDTRC currently levies a tax at a rate of 0.50 percent, it has a total of 0.50 percent left. In addition, the 2 percent cap limitation under the Transactions and Use Tax Law prohibits SDTRC from increasing the current 0.50 percent tax more than 0.50 percent. Because the City of National City imposes a 1 percent tax and the SDRTC imposes a 0.50 percent tax, San Diego County has only 0.50 remaining.

4. **Legislative findings and declarations.** This bill contains legislative findings and declarations that, among other things, clarify that any extension, expansion, *or* increase in district taxes because of the amendments to Section 132320 shall have prospective application only to district taxes approved by the voters on or after January 1, 2009.   What is the effect of this provision?   Voters must approve, by a two-thirds vote, to use the current stream of local sales tax revenue to pay for the new purposes created by this bill (i.e., replenishing sand on local beaches).   The intent provision would also clarify that the voters must approve any increase in the current tax rate for which those revenues would be used to fund the new purposes.

5. **Related Legislation.**   Assembly Bill 1646 (DeSaulnier) would authorize counties, subject to two-thirds approval of the voters, to impose a transactions and use tax at a rate in 0.25 percent increments and not to exceed a maximum tax rate of 1 percent, for county health purposes.

COST ESTIMATE

This bill does not increase administrative costs to the Board because it only authorizes the SDRTC to increase its current tax rate of 0.50 percent. However, if the voters of San Diego County approve the ordinance increasing the tax, the SDRTC would be required to contract with the Board for its preparation costs, as well as the ongoing costs for the Board's services in actually administering the ordinance.

Based on the Board's experience with similar county-imposed taxes, the one-time preparatory costs typically can range from $20,000 to $50,000.   Preparatory costs are the actual costs to update publications and returns, perform programming for data processing, develop instructions for both Board staff and taxpayers, and notify taxpayers, and other necessary costs which include costs from other state agencies (e.g., California Department of Motor Vehicles costs to train staff and program computers). In addition, various factors can have an impact on the Board's preparatory costs.   For example, the Board mails a special notice to taxpayers in the affected county, including adjacent areas. If a county borders jurisdictions with a large number of seller's permits, the Board's mailing costs could be substantially higher.

Currently, San Diego County has one district tax being imposed at a rate of 0.50 percent. For this tax, the Board's estimated assessment of administrative costs for the fiscal year 2007-08, using the new methodology, is $2,133,100. The proposed tax increase would increase the current tax rate of 0.50 percent by an additional rate of either 0.25 or 0.50 percent for a total tax rate of either 0.75 or 1 percent.   This could result in an increase in administrative costs of approximately $500,000 to $1 million annually.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

REVENUE ESTIMATE

Taxable sales in the County of San Diego during the fiscal year 2006-07 were $48 billion.   Therefore, a district tax in the County of San Diego would raise the following amounts annually.

Rate	Revenue
0.25%	$120 million
0.50%	$240 million

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.